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(02)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH

AT BILASPUR:(CG)

CRIMINAL APPEAL NO. 13 of 2000.

Appellant. (In Jail). ::: Rambharose son of Itwari Barath, aged about 48 years, Resident of village- Muktaraja, P.S.Baradwar, Distt: Janjgir (Chhattisgarh).

Versus.

Respondent. ::: The State of M.P.(Now Chhattisgarh) Through the P.S. Baradwar, Distt: Janjgir.

(10)

Filed on 13.11.24

By Shri Jagannath Rao Advocate

R. to AR

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

(3B)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

(DIVISION BENCH)

CRIMINAL APPEAL NO.13 OF 2000

Rambharose

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge
08.11.2005

HON'BLE MR. JUSTICE SATISH K AGNIHOTRI

Sd/-
Satish K. Agnihotri
Judge
10.11.2005

POST FOR JUDGMENT ON 16th NOVEMBER, 2005

Sd/-
L.C.BHADOO
Judge
14.11.2005

(39)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.13 of 2000

Rambharose

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Present: -

Mrs. Renu Kochar, Advocate: For the appellant.

Mr. Ashish Shukla, Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer For the State/respondent.

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND

HON'BLE MR.SATISH K AGNIHOTRI, JJ.

J U D G M E N T

(Delivered on 16th November, 2005)

The following judgment of the Court was delivered by *L.C. Bhadoo, J*:-

1. This appeal is directed against the judgment dated 19.10.2000 passed by learned 1st Additional Sessions Judge, Sakti in Sessions Trial No.151/2000 whereby learned Additional Sessions Judge after holding accused /appellant Rambharose guilty for commission of offence under Section 302 of the Indian Penal Code for committing murder of Navratan Bareth sentenced him to undergo imprisonment for life and to pay fine of Rs.2,500/-, in default of payment of fine to further undergo R.I. for 06 months.

2. The prosecution story in brief is that in the intervening night of 5th & 6th April, 2000 in the Village Muktaraja a Ramayan programme was organized, therefore, at the place where Ramayan programme was organized many villagers assembled. Deceased Navratan Bareth also came to that place,

(6D)

immediately thereafter accused/appellant Rambharose also came there. However after seeing the accused/appellant Navratan Bareth left the place and immediately thereafter the accused/appellant had also left the place. At about 11.00 p.m. Navratan Bareth came running to the house of Suli Bai (PW-19) and sat on the cot of Suli Bai which was laying in the courtyard of the house of Suli Bai. Accused/appellant Rambharose also came running to that place and started attacking Navratan Bareth with a knife. He assaulted continuously on almost all parts of the body of Navratan Bareth, as a result of which he received many injuries and he instantaneously succumbed to the injuries. Accused/appellant left the place of occurrence by saying to Suli Bai & her daughter namely Itwari Bai not to raise cry and not to disclose this fact to anybody otherwise he will kill them also. However, in the morning at about 6.00 a.m. Suli Bai informed about the incident to Umesh Kumar (PW-1) nephew of deceased Navratan. On hearing from Suli Bai, Umesh Kumar immediately informed about the incident to other family members namely Devprasad, Santosh etc and thereafter went to the scene of occurrence where he saw dead body of Navratan Bareth, from where he along with Devprasad went to the Police Station Baradwar. On the way he met with Ashok Kumar (PW-3) to whom also he disclosed about the incident. Based on the report given by Umesh Kumar (PW-1) F.I.R. (Ex.P-1) was registered by the Station House Officer, Police Station Baradwar at 7.00 a.m. on 6.4.2000. After registering the F.I.R., Station House Officer reached to the place of occurrence, issued notice Ex.P-2 to the Panchas and prepared the Panchnama Ex.P-3 of dead body of Navratan Bareth. He took into possession the plain soil and blood stained soil from the scene of occurrence as also one Chaddar of green colour

under Ex.P-4. He also took into possession the weapon of offence under Ex.P-5 in pursuance of information Ex.P-9 given by the accused/appellant. He took the clothes of deceased into possession under Ex.P-6, prepared the site plan Ex.P-8 and sent the dead body of Navratan Bareth to Primary Health Centre, Baradwar for postmortem examination. Dr. P. Singh (PW-10) conducted the postmortem, prepared the postmortem report Ex.P-13. He was of the opinion that cause of death of deceased Navaratan Bareth was shock and haemorrhage due to rupture of heart, lungs, liver and other organs. The weapon of offence was also sent to doctor for his opinion as to whether injuries found on the body of deceased Navratan Bareth can be caused by that weapon and the doctor gave his opinion that injuries can be caused by the weapon recovered at the instance of the accused/ appellant. Recovered articles were also sent for examination to Forensic Science Laboratory, Sagar from where report Ex.P-28 was received.

3. After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Sakti, who in turn committed the case for trial to learned Sessions Judge, Bilaspur from where learned 1st Additional Sessions Judge, Bilaspur received the case on transfer. The prosecution in order to prove the offence against the accused/appellant examined as many as 20 witnesses. On the other hand, learned Additional Sessions Judge recorded the statement of accused/appellant under Section 313 of the Cr.P.C. in which he denied the prosecution evidence, material appearing against him, he pleaded innocence and stated that offence was committed by the son of Suli Bai (PW-19) namely Bazi and he has been falsely implicated in the crime. Two defence witnesses namely Ramsai (DW-1) & Nankiram (DW-2) were also examined.

4. Learned 1st Additional Sessions Judge after hearing the arguments of learned Additional Public Prosecutor, learned counsel for the accused and after perusal of records, convicted and sentenced the accused/appellant in the manner indicated in the earlier part of this judgment.

5. We have heard Mrs. Renu Kochar, learned counsel for the appellant and Mr. Ashish Shukla, Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer on behalf of the State/respondent.

6. As far as the question of nature of death of Navratan Bareth being concerned as homicidal, the same has not been disputed by learned counsel for the accused/appellant. The evidence of PW-9, Itwari Bai & PW-19, Suli Bai is to the effect that they witnessed the crime in question as the accused/appellant Rambharose attacked the deceased with knife in the courtyard of their house. Dr. Singh (PW-10), who conducted the postmortem on the body of deceased Navratan Bareth, has stated in his evidence that there were two lacerated wounds on the chest and other five injuries of sharp cutting were present near the left & right auxiliary regions, on the neck and on the right knee. He has further stated that on opening of body the 2nd, 3rd & 4th ribs were found fractured, right lung was ruptured in the size of 2x2x3 inch and blood was oozing out of it, left lung was also ruptured in the size of 2x2x3 inch, heart was also lacerated & punctured in the size of 2x3 inch, intestine was ruptured, membrane of intestine was also ruptured and the fecal material was coming out of it. Half digested food was present and cause of death was shock and haemorrhage on account of excessive bleeding and rupture of heart, lungs & liver. The nature of death was homicidal and injuries were anti mortem in nature.

(63)

Therefore, in view of the above evidence of eyewitnesses Itwari Bai (PW-9) & Suli Bai (PW-19) and Dr. Singh (PW-10), it is established that the death of Navratan Bareth was homicidal in nature.

7. Now coming to the involvement of accused/appellant in committing the murder of Navratan Bareth, learned counsel for the accused/appellant vehemently argued that the evidence of PW-9, Itwari Bai & PW-19, Suli Bai is not natural and same does not inspire confidence, for the reason that when at 11.00 p.m. in the night accused Rambharose was attacking deceased Navratan with a knife why the deceased and these witnesses had not raised cries and also why PW-19 Suli Bai remained silent whole night and only in the morning she informed Umesh Kumar (PW-1) about the incident. She further argued that other family members of PW-19 Suli Bai were also residing in the same house but they have not been produced as prosecution witnesses, therefore, the above circumstances makes the evidence of these two witnesses untrustworthy and unreliable.

8. On the other hand, learned Public Prosecutor for the State supported the judgment of trial Court.

9. In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have to examine whole case from the beginning. PW-11 Mehttar has stated in his evidence that on the fateful night in front of his house Ramayana was being narrated and some articles were laying there, therefore, he along with Kodu & Gangaram was sitting there. At about 9.00 p.m. in the night deceased Navratan came and thereafter accused Rambharose also came there. After seeing Rambharose, Navratan left the place, just after that Rambharose also left the place and in the next morning

he came to know that Navratan has been murdered. Though this witness has been declared hostile but the above fact has been proved by him that at the place where Ramayana was being performed Navratan & Rambharose came and they left the place one after another before the incident in question i.e. attacking by accused to Navratan Bareth. This evidence is corroborated by the evidence of PW-12, Kodu & PW-13, Gangaram. Even, the accused/appellant in his statement under Section 313 of the Cr.P.C. in answer to Question Nos. 2 & 3 has admitted this fact. Therefore, the presence of deceased Navratan and accused Rambharose together on the fateful night and leaving the Ramayana place by them one after another before the incident in question is also proved and the evidence of above witnesses i.e. PW-11 Mehttar, PW-12,Kodu & PW-13, Gangaram is admissible under Section 6 of the Evidence Act which envisages that '*a fact or statement of fact or opinion, which is so closely connected in time, place and circumstance with some act or event which is in issue that it can be said to form a part of the same transaction as the act or event in issue, is itself admissible in evidence*'. Apart from this fact, PW-19 Suli Bai and PW-9 Itwari Bai, who is daughter of Suli Bai, are not in any way interested witnesses nor there is any evidence to the effect that they had any animosity against the accused/appellant and as per evidence of PW-1 Umesh Kumar in the morning at about 6.00 a.m. or 6.15 a.m. Suli Bai came and informed him about the incident. As per medical evidence also the lacerated and incise wounds were found all over the body of deceased and doctor had opined that above injuries can be caused by the weapon of offence i.e. knife which was recovered at the instance of accused/appellant in pursuance of information given by him under Section 27 of the Evidence Act.

Therefore, in view of the above clinching circumstantial evidence showing the presence of accused/appellant at the time of offence connects the accused/appellant with the murder of deceased Navratan Bareth.

10. In the light of above clinching circumstantial evidence, if we examine the evidence of PW-9 & PW-19 i.e. Itwari Bai & Suli Bai that as to why they have not raised any hue & cry and why they waited till morning to inform Umesh Kumar about the incident, Suli Bai (PW-19) & Itwari Bai (PW-9) have categorically stated in their evidence that accused Rambharose threatened them that if they will raise any hue & cry or disclose this fact to anybody then he will kill them also. Therefore, being frightened they were not able to raise any hue and cry, as such, being ladies their conduct cannot be said to be un-natural. As far as giving of information to PW-1 Umesh Kumar after passing of some time in the morning is concerned, PW-19 Suli Bai being lady was frightened on account of serious incident happened in her presence in her house and the threat given by accused/appellant that if they raise any hue & cry or disclose this fact to anybody, he will kill them, therefore, in the circumstances, conduct of PW-19 Suli Bai informing PW-1 Umesh Kumar after passing of some time in the morning cannot be held to be unnatural. It is settled law that no hard & fast rule can be laid down about the conduct & behaviour of witness that how he/she will act or react in a particular circumstance, it depends upon the facts and circumstances of each case and person to person that how he/she will behave and conduct looking to the surrounding circumstances of the case and therefore, being a lady, conduct of Suli Bai (PW-19) cannot be said to be unnatural, more particularly when this lady was not related with the deceased and was not having any animosity against

the accused. When the Investigating Officer reached to the scene of occurrence dead body of deceased was found in the house of Suli Bai (PW-19) and the accused has not been able to explain that when he left the Ramayana place just after Navratan left the place where he had gone and why Suli Bai has unnecessarily falsely implicated him in the crime. While cross-examining PW-19 Suli Bai an unsuccessful attempt was made to show that the said crime was committed by the son of Suli Bai namely Bazi, but during investigation no such thing was found. Even from the cross-examination of Investigating Officer (PW-20) Shri B.S. Dhruv learned counsel for the accused has not been able to elicit anything or any fact through which an inference can be drawn that the crime in question was committed nonetheless by the son of PW-19 Suli Bai.

11. As far as the question that why Suli Bai (PW-19) & Itwari Bai (PW-9) had not disclosed the fact to their other family members that such a serious crime has been committed is concerned, Suli Bai (PW-19) & Itwari Bai (PW-9) had clearly stated in their evidence that other family members were sleeping in their houses, therefore, they could not know about this fact and as the crime in question was said to happen at 11.00 p.m. in the night and normally in the villages people go for sleep at about 9.00 p.m. in the night therefore, in the facts and circumstances of the case the argument advanced by learned counsel for the accused/appellant is of no help to the accused / appellant. Moreover, the evidence of eyewitnesses namely Suli Bai (PW-19) & Itwari Bai (PW-9) is corroborated by the circumstantial evidence i.e.;

a. Body of deceased Navratan was found in the house of these two eyewitnesses.

b. Injuries on the body of deceased Navratan, as stated by these two witnesses, were also found.

c. Deceased and accused were seen at the place where Ramayana was being performed i.e. in front of the house of PW-11 Mehttar just before the incident in question and from that place first Navratan left and immediately thereafter accused Rambharose also left that place.

d. Doctor has given opinion that injuries which were found on the body of deceased Navratan can be caused by the weapon of offence, which was recovered at the instance of accused/appellant, which has been proved by the Investigating Officer Shri B.S. Dhruv (PW-20) Manharanlal (PW-8) & Ashok (PW-3) and even as per FSL report human blood was found on the knife.

It is true that there is no serologist report that the blood, which was found on the knife, was of the blood group of deceased Navratan, but in this case the accused/appellant is not being connected solely on the basis of this circumstance. There are eyewitnesses and other clinching circumstantial evidence and this circumstance is being pressed as a circumstance supporting the other circumstances, therefore, this circumstance can also be taken together with all other circumstantial evidence.

12. The trial Court has rightly rejected the evidence of defence witnesses namely Ramsai (DW-1) & Nankiram (DW-2). The evidence of these two witnesses is of no help to the accused/appellant because Ramsai (DW-1) has simply stated that on the fateful night Suli Bai (PW-19) came to his house three times and inquired from him that why he is not going to

(48)

sleep and he has not heard any cry. This witness has very categorically in Para 11 of the cross-examination stated that he did not disclose this fact to anyone that Suli Bai (PW-19) came to his house thrice in the night. When next day morning he came to know about the murder of Navratan Bareth in the house of Suli Bai, he went to the place of occurrence at about 8.00 a.m., then why he did not disclose the fact of Suli Bai coming to his house thrice in the night makes the evidence of this witness doubtful. He has further stated in Para 8 of his evidence that Suli Bai informed him that Navratan has been murdered by Rambharose, but according to his information Rambharose has not murdered Navratan, but he has not been able to disclose the basis of his knowledge. The evidence of Nankiram (DW-2) is to the effect that he saw the accused Rambharose and deceased Navratan at the place where Ramayana was being performed but he has stated that Rambharose left that place half an hour after Navratan left the place and thereafter, Rambharose went to his house. But why this witness has not informed this fact to the police, is not explained by him and his evidence is contrary to the evidence of PW-11, Mehttar, PW-12, Kodu & PW-13, Gangaram who have stated that Rambharose left the place just after Navratan left the place. In Para-8, this witness has stated that next day morning it was being said that Rambharose has murdered Navratan and the name of Bazi was also being taken. The evidence of this witness does not inspire confidence, moreover, his evidence is based on the guesswork and hearsay. Therefore, the evidence of above defence witnesses is of no help to the accused person.

13. As far as the motive is concerned, the prosecution case is that one month before the incident accused Rambharose saw his wife and deceased Navratan Bareth in a compromising

position and therefore, he was having animosity against the deceased and he wanted to kill him. But, there is no clinching legal evidence to establish that fact, it is settled law that when there is ocular & clinching circumstantial evidence and based on that the accused can be connected with the crime, in that case if the motive is not proved, the same cannot be fatal to the prosecution case.

14. In view of the foregoing discussion, there is ocular and clinching legal circumstantial evidence to connect the accused/appellant with the murder of deceased Navratan Bareth, therefore, the finding of the trial Court to that effect is correct, as the same is based on the legal evidence and cannot be interfered with, as there is no reason before this Court to take a different view from the trial Court.

15. In the result, we do not find any infirmity in the finding of trial court. The appeal is without merit, same is liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge
16th-11-2005

Sd/-
Satish K. Agnihotri
Judge
16th-11-2005

Roshan/-